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|-------------------|----------------|---------|----------------------|---|---------------------|
| APPLICATION NO. 2 | FILING DATE 98 | WEITZEL | FIRST NAMED INVENTOR | T | ATTORNEY DOCKET NO. |
| | | | | | CPW500757US |

HM42/0912
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| EXAMINER |
| GARDNER, S |

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|----------|--------------|
| ABT UNIT | PAPER NUMBER |
| 1815 | |

DATE MAILED: 09/12/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/930,702

Applicant(s)

Wetzel et al.

Examiner

Sally Gardner-Lane

Group Art Unit

1615



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-23 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-23 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention

2. Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The terms precursors and derivatives are vague in the context of the present disclosure which does not describe what compounds are intended by such description. Accordingly, one skilled in the art would not be able to make and/or use the invention as claimed.

3. Claims 11,13,15,22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, "very high" is indefinite as a relative term.

In claims 13 and 15 , parenthetical information renders the claim indefinite. Removal of the parentheses is suggested.

In claims 22 and 23, "particularly..." is indefinite as it is unclear which temperature range is intended by the claim language.

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Correction and/or clarification of the above is requested.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 1-23 are rejected under 35 U.S.C. 102(b) or 102(e) as being anticipated by Hague, US 5,543,074, Procter & Gamble, WO 94/17166, Unilever, EP 0 485 212 A1 or Patterson, US 5,248,495 .

Each reference teaches the claimed combination of surfactant, fatty amphiphile and optional hydrocolloid.

See Hague at col. 2; col. 3, lines 20-60; col. 4, lines 23-70; col. 5, lines 1-41; col. 6, lines 33-35; example 1 at col. 8. Note that Hague teaches a dispersion temperature of approximately 50 degrees.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hague, US 5,543,074, Procter & Gamble, WO 94/17166, Unilever, EP 0 485 212 A1 or Patterson, US 5,248,495 .

It is the examiner's primary position that the claimed invention is anticipated by the cited prior art (see above rejection). Alternatively, it is the examiner's position that 1) the cited prior art does not particularly disclose each species and/or concentration of claimed components and 2) the prior art does not particularly recognize the claimed dispersion temperature.

As to the first distinction, the selection of an optimal species to achieve an art recognized effect is ordinary within the gambit of ordinary skill in the art.

As to the second distinction, it is noted above for example that Hague teaches a dispersion temp. of approximately 50 degrees. While it is the examiner's primary position that such a temperature includes values within the range now claimed, alternatively it is the examiner's position that having before him the Hague disclosure, one skilled in the art would be motivated to select a dispersion temp. of at least 60 degrees. The motivation lies in achieving a similar product with similar utility.

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Presently, no claim is allowed.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sally Gardner-Lane whose telephone number is (703)308-4431. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached at (703)308-2927. The fax number for this group art unit is (703)305-3593 or (703)308-4556.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly


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signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist who can be reached at (703)308-1235 from 8:30 a.m. to 5:00 p.m.

Sally Gardner-Lane:sgl

September 8, 1998


SALLY GARDNER-LANE
PRIMARY EXAMINER